JAMES D. AND JOYCE J. BRUNK
JAMES N. SMOAK, ET AL.

IBLA 2000-287 & 2000-288 Decided March 6, 2003

Appeals from decisions issued by the Wyoming State Office, Bureau of Land Management, rejecting applications for recordable disclaimers of interest. WYW 147973, WYW 148311.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Disclaimers of Interest

   Section 315 of FLPMA, 43 U.S.C. § 1745 (2000), authorizes the Secretary of the Interior to issue a recordable disclaimer of interest in any lands where the disclaimer will help remove a cloud on the title of such lands and where the Secretary makes one of several determinations.

2. Federal Land Policy and Management Act of 1976: Disclaimers of Interest

   Applications for recordable disclaimers of interest filed by owners of lands lying to the east of the meander line of the Snake River south of the township line forming the south boundary of Grand Teton National Park are properly rejected for lands lying north of that boundary when the court judgments relied on by the land owners in support of their applications incorporated stipulations expressly excepting lands north of that township boundary from the terms of the settlement and the United States claims ownership of the lands in question.

APPEARANCES: E. Craig Smay, Esq., Salt Lake City, Utah, for appellants.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

James D. and Joyce J. Brunk (IBLA 2000-287) and James N. Smoak, et al. (IBLA 2000-288) 1/, have appealed separate decisions issued on May 9, 2000, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting their respective applications for recordable disclaimers of interest. Because the appeals raise virtually identical issues, we have consolidated them for purposes of review.

Smoak's predecessor-in-interest, Fern K. Nelson, and the Brunks were included as defendants in United States v. Albrecht, C79-113K (D. Wyo., complaint filed Apr. 26, 1979), an action brought by the United States to quiet title to 108 parcels of unsurveyed lands lying along the Snake River allegedly omitted from the original surveys of Ts. 40 and 41 N., R. 117 W., and Ts. 40, 41, and 42 N., R 116 W., 6th P.M., Teton County, Wyoming. On January 21, 1988, the Brunks and the United States executed a Stipulation for Entry of Judgment in which the Government acknowledged that the Brunks owned two parcels of land 2/ along the Snake River in

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1/ The other appellants in IBLA 2000-288 are J. Stephen Dockery, III, Lisa M. Dockery, and Wilda D. Dockery. We will refer to these appellants collectively as "Smoak."

2/ These lands were described as:

"PARCEL NO. 1: A tract of land located in Lot 3 and Lot 4 and the north Half of the Southwest Quarter of Section 2, Township 42 North, Range 116 West, 6th P.M., more particularly described by metes and bounds as follows: Beginning at the intersection of the westerly boundary line of Lot 3 of said Section 2 with the Philip Morton meander line; thence S0°57'W a distance of 540.8 feet to a point which lies 72.3 feet southerly from the east-west center line of said Section 2; thence S87°49'E a distance of 955.9 feet, more or less, parallel to the east-west center line of said Section 2 to a point; thence N0°07'E a distance of 748.9 feet, more or less, to a point on said meander line; thence S49B51'W a distance of 130.5 feet, more or less, along said meander line to a point; thence N75°10'W a distance of 474.9 feet, more or less, along said meander line to a point; thence S61°43'W a distance of 441.7 feet, more or less, along said meander line to the point of beginning.

"PARCEL No. 2: All lands in Section 2, Township 42 North, Range 116 West, 6th P.M., lying northerly of the lands described in Parcel 1, above, from the northern boundary thereof to the southern bank of the Snake River, but only such portion thereof that lies west of the northern extension of the eastern boundary of the lands

(continued.....)

sec. 2, T. 42 N., R. 116 W., 6th P.M., Teton County, Wyoming. The Stipulation also stated that the

> United States of America hereby agrees and consents to the Court entering judgment in favor of the Defendants, quieting title to the lands lying between the property described in Paragraph 2 [of the Stipulation] and the thread of the Snake River, subject to all conditions and reservations contained in the original patents from the United States, except that the lands shall not include any lands north of the Township line between T. 42 N. and T. 43 N. * * *.

(Brunks Stipulation at 3, ¶ 3.)

In a separate stipulation entitled "Stipulation for Entry of Judgment between the United States of America and William F. Brunk," also executed on January 21, 1988, the Government acknowledged that, at the time the complaint was filed, William Brunk had owned land along the Snake River in a portion of lot 4, sec. 2, T. 42 N., R. 116 W., 6th P.M.,3/ which he had conveyed by warranty deed dated January 1, 1984, to "James D. Brunk, a married man" who "agrees to be bound by the terms of this Stipulation and consents to the Court's Entry of Judgment." (William Brunk Stipulation at 2-3, ¶ 2(b).) The United States also stipulated that it

> agrees and consents to the Court entering judgment in favor of the Defendant, quieting title to the lands lying between the property described in Paragraph 2 above and the thread of the Snake River, subject to all conditions and reservations contained in the original patents from the United States, except that the lands shall not include any lands north of the Township line between T. 42 N. and T. 43 N. * * *.

(William Brunk Stipulation at 3, ¶ 3.)

In a judgment issued on January 22, 1988, the U.S. District Court in Albrecht "approve[d] and adopt[ed] the Stipulation for Entry of Judgment between the United States of America and James D. Brunk and Joyce J. Brunk, a copy of which is

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2/ (..continued)
described in Parcel 1 and also lies east of the northern extension of the western boundary of the lands described in Parcel 1."
(Brunks Stipulation at 2-3, ¶ 2.)

3/ This land was described as "Lot 3 of the Homesite Addition of the Grand Teton Ranch, Teton County, Wyoming." (William Brunk Stipulation at 2, ¶ 2(a).)

attached and incorporated herein by reference." (Judgment Re: United States and James D. Brunk and Joyce D. Brunk (Brunks Judgment) at 1, ¶ 1.) The court entered judgment quieting title in the Brunks to the lands lying between their property in sec. 2, T. 42 N., R. 116 W., 6th P.M., "and the thread of the Snake River, subject to all conditions and reservations in the original patents from the United States." (Brunks Judgment at 2, ¶ 3.) In a separate judgment, also issued on January 22, 1988, the Albrecht court "approve[d] and adopt[ed] the Stipulation for Entry of Judgment between the United States of America and William F. Brunk, a copy of which is attached and incorporated herein by reference." (Judgment Re: United States and William F. Brunk (William F. Brunk Judgment) at 1, ¶ 1.) After reciting that William F. Brunk had conveyed title to the affected property to "James D. Brunk, a married man," the court entered judgment quieting title in James D. Brunk to the lands lying between the transferred property "and the thread of the Snake River, subject to all conditions and reservations in the original patents from the United States." (William F. Brunk Judgment at 2, ¶ 3.)

On March 18, 1988, the United States and Fern K. Nelson executed a Stipulation for Entry of Judgment in which the Government recognized that Nelson owned lands lying along the Snake River in sec. 2, T. 42 N., R. 116 W., 6th P.M., Teton County, Wyoming. 4/ The Stipulation further provided that the

> United States of America hereby agrees and consents to the Court entering judgment in favor of the Defendant, quieting title to the lands lying between the property described in Paragraph 2 above and the thread of the Snake River, subject to all conditions and reservations contained in the original patents from the United States, except that this Stipulation shall not include any lands north of the

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4/ These lands were described as described as:

"A tract of land located in Lot 3 and the Northeast Quarter of the Southwest Quarter of Section 2, Township 42 North, Range 116 West, 6th P.M., Teton County, Wyoming, more particularly described as follows:

"'Beginning at the intersection of the Easterly boundary line of Lot 3 of said Section 2 with the Philip Morton Meander Line; thence S49°51'W a distance of 500.7 feet, more or less, along said meander line to a point; thence S00°07'W a distance of 748.9 feet, more or less, to a point which lies 72.3 feet southerly from the East-West centerline of said Section 2; thence S87°49'E a distance of 382.6 feet parallel to the East-West centerline of said Section 2 to a point; thence N00°7'E a distance of 1087.2 feet, more or less, to the point of beginning, EXCEPTING THEREFROM conveyance to Dorothy Ann Updike * * * and conveyance to Albert L. Nelson * * *.'"
(Nelson Stipulation at 2-3, ¶ 2.)

> Township line between T.42 N. and T.43 N., which lands may be claimed by Defendant * * *.

(Nelson Stipulation at 3, ¶ 3.)

On March 28, 1988, the Albrecht court issued a judgment, "approv[ing] and adopt[ing] the Stipulation for Entry of Judgment between the United States of America and Fern K. Nelson, a copy of which is attached and incorporated by reference." (Judgment Re: United States and Fern K. Nelson) (Nelson Judgment) at 1, ¶ 1.) The court entered judgment quieting title to the lands lying between Nelson's property "and the thread of the Snake River, subject to all conditions and reservations contained in the original patents from the United States." (Nelson Judgment at 2, ¶ 3.) 5/

On October 1, 1998, counsel for Smoak filed with BLM an application for a recordable disclaimer of interest, dated September 29, 1998, pursuant to 43 U.S.C. § 1745 (2000) and 43 CFR Subpart 1864, requesting that the United States "relinquish title to riparian lands appurtenant to the applicants' deeded upland, and lying between the meander line and the thread of the [Snake] river, notwithstanding the extension of the land thus described north of the township line [between T. 42 N. and T. 43 N.]." (Smoak Application at 4.) He explained that Smoak's deeded land lay on the east bank of the meander line of the Snake River, south of the east-west boundary between Ts. 42 and 43 N., R. 116 W., 6th P.M., and that the township boundary was also the south boundary of Grand Teton National Park.

While acknowledging that the Nelson Stipulation, as incorporated into the Nelson Judgment, quieted title only to the riparian land lying south of the township line between T. 42 N. and T. 43 N., counsel asserted that, based on a "general judgment" for the landowner defendants in Albrecht, 6/ Smoak owned all the riparian

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5/ In May 1988, Nelson conveyed various lands to Smoak and James S. Dockery including the property identified in the Stipulation and Judgment "[t]ogether with those riparian lands which are appurtenant to [those lands], consisting of approximately 22 acres with shifting riparian boundaries * * *" as set forth in the Nelson Judgment. (Title Certificate No. 46258 at 1.) Dockery's interest in those lands apparently was subsequently transferred to J. Stephen Dockery, III, Lisa M. Dockery, and Wilda D. Dockery. See Title Certificate No. 46258 at 2.

6/ The "general judgment" referred to by counsel is the Order Approving In Part and Disapproving In Part Findings and Conclusions of Special Master, United States v. Albrecht, No. C79-113K (D. Wyo. Sept. 23, 1983). That decision was appealed to the 10th Circuit Court of Appeals for the 10th Circuit on Nov. 30, 1983. The court (continued.....)

land lying between the deeded upland on the east bank meander line of the Snake River and the thread of the River, including the land extending northeast across the boundary between Ts. 42 and 43 N., pointing out that, although the Albrecht action only addressed riparian lands south of that boundary, the affected landowners who had filed counterclaims to quiet title to land in T. 43 N. had executed stipulations and received judgments in their favor on that issue. (Smoak Application at 3.)

Counsel contended that, given that the township line did not necessarily limit the riparian titles, the Nelson Stipulation and Judgment created a cloud on Smoak's title because it suggested that Albrecht had not settled the title issue, and that the United States retained the ability to contest the title to the riparian land north of the township line. According to counsel, the requested disclaimer was needed to resolve that ambiguity.

On February 8, 1999, counsel for the Brunks 7/ filed an application for a recordable disclaimer, dated February 4, 1999, requesting that the disclaimer "relinquish title to riparian land appurtenant to the deeded upland and lying between the meander line and the thread of the [Snake] River, notwithstanding its extensionat any time north of the township line [between Ts. 42 and 43 N.]." (Brunks Application at 3.) The application filed by the Brunks essentially reiterated the rationale detailed in application filed by Smoak.

BLM forwarded both the applications for recordable disclaimers of interest and a draft disclaimer document to the Solicitor's Office, Rocky Mountain Region, for review and concurrence. By memorandum dated February 24, 2000, the Solicitor's Office concluded that, given the facts of the cases, the Department had no authority to issue the requested disclaimers. 8/ The memorandum noted that section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § (2000), authorized the BLM to issue disclaimers where the interest of the United States had either terminated or had never actually existed and was not meant as a land conveyance mechanism where the United States retained ownership of the land. The Solicitor's Office observed that the land sought was still owned by the United States and managed as part of Grand Teton National Park, and that the settlement agree

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6/ (....continued)
remanded the case on Mar. 23, 1984. The judgments and stipulations cited herein apparently resolved the remanded case as to appellants.

7/ Smoak and the Brunks are represented by the same counsel.

8/ The subject of the memorandum is listed as "Recordable Disclaimer of Interest Request on behalf of James and Joyce Brunk." While the memorandum prepared by the Solicitor's Office is limited to the Brunk application, the rationale provided is equally applicable to the Smoak application.

ments relied upon by the applicants pertained only to land in the Snake River in Ts. 40, 41, and 42 N., R. 116 W., not to the requested land in T. 43 N., R. 116 W. The memorandum further stated that the stipulations incorporated into the judgments explicitly excluded the lands in T. 43 N., and that the applicants' agreement to settle the lawsuit by foregoing any claim to the land in T. 43 N. and the court's approval of that agreement precluded them from now asserting title to National Park land.

In separate decisions dated May 9, 2000, BLM rejected the applications, adopting the analysis in the Solicitor's Office memorandum.

In a joint statement of reasons for appeal (SOR), the Brunks and Smoak argue that BLM's and the Solicitor's Office's conclusions that BLM has no authority to issue the recordable disclaimers are flawed because:

> (1) The Albrecht settlements do not purport to settle the titles to land for which there was no pleading in the action [i.e., the lands in T. 43 N., R. 116 W., 6th P.M.], nor does the action contain any judgment that the United States owns the subject lands; they do not constitute conveyances of land to the United States or waiver of any claims to land; (2) The land sought by the applicants is not "still owned by the United States"; it has not been owned by the United States since the patents issued to applicants' predecessors, which were confirmed in Albrecht; and (3) Establishment of the Park boundaries did not transfer any title to the United States. The land in issue belongs to applicants; the Albrecht settlements and judgments do not convey any titles to the United States.

(SOR at 4.) Appellants state that, although they could sue the Government to quiet title to the lands and the Albrecht rulings would be res judicata as to all issues, such a lawsuit should be unnecessary, especially since the lands are disconnected fragments between the titles settled in Albrecht. They therefore maintain that the disclaimer procedure is the appropriate mechanism for clarifying titles since the ownership principles have already been litigated and settled.

[1, 2] Section 315 of FLPMA, 43 U.S.C. §1745 (2000), authorizes the Secretary of the Interior to issue a recordable disclaimer of interest in any lands "where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States." Although, in accord

ance with the provisions 43 U.S.C. § 1745(c) (2000) and 43 CFR 1864.0-2(b), a disclaimer has the same effect as a quitclaim deed, a disclaimer "does not grant, convey, transfer, remise, quitclaim, release or renounce any title or interest in lands * * *." 43 CFR 1864.0-2(b).

We find that appellants have failed to establish error in BLM's decisions. The court judgments cited above incorporate the stipulations resolving the Albrecht litigation as to appellants or their predecessors-in-interest. Those stipulations expressly excluded "any lands north of the Township line between T. 42 N. and T. 43 N. * * *." 9/ The lands for which appellants seek recordable disclaimers of interest all lie north of that township line. 10/ Moreover, the memorandum from the Solicitor's Office makes clear that those lands are claimed by the United States. 11/ The fact that other litigants in Albrecht, who filed counterclaims to quiet title to land in T. 43 N., may have executed stipulations and received judgments in their favor does not dictate a different result in this case.

Appellants contend that the "Albrecht settlements and judgments do not convey the titles to the United States." (SOR at 4.) We agree, but, likewise, they do not establish title in appellants. There is no evidence in the present record that a record interest of the United States in the specific lands in question has terminated by operation of law or is otherwise invalid. Accordingly, BLM properly rejected the applications.

9/ The Nelson Stipulation contained additional language following that quoted above: "which may be claimed by Defendant * * *."

10/ The complexity and unpredictability of resolving riparian land title issues on the upper Snake River in Teton County, Wyoming, is analyzed in detail in Morgenthaler, Surveys of Riparian Real Property: Omitted Lands Make Rights Precarious, 30 Rocky Mt. Min. L. Inst. 19-1 through 19-98 (1984), which contains an in depth analysis of the District Court's Sept. 28, 1983, Order in United States v. Albrecht, No. C79-113K (D. Wyo.).

11/ "[T]he land sought * * * is still owned by the United States and managed by the National Park Service as part of the Grand Teton National Park." (Solicitor's Office Memorandum at 1.)

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge